



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
SUCCESSION CAUSE NO. 364 OF 2013

IN THE MATTER OF THE ESTATE OF MURIUKI NYAGA (DECEASED)

-BETWEEN -

PERIS WANJIRA MURIUKIAPPLICANT

-VERSUS-

CEVELINA MBEERE MURIUKIRESPONDENT

RULING

PERIS WANJIRA MURIUKI the applicant has taken out summons under **Section 76 Laws of Succession Act** for revocation or annulment of grant issued to respondent herein confirmed on 19th May 2010. The applicant has cited the following grounds in her summons for revocation.

1. That proceedings to obtain the grant were defective in substance.
2. That the grant was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the case.
3. That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.

When the application was canvassed before me the main ground taken up by the applicant who is the daughter of the respondent was the defect of the proceedings that led to the issuance of grant now being sought to be annulled. The defect as pointed out was that the succession proceedings was filed in subordinate court when the value of the estate was clearly beyond the jurisdiction of the Resident Magistrate court.

The other point taken was that the applicant was a “dependant” within the meaning given under **Section 29 Laws of Succession Act Cap 160** and yet she was locked out of the distribution of the estate of the deceased during confirmation.

The respondent’s response filed confirms that she is the mother of the applicant and that indeed the applicant was not given any share in the estate her reasoning being that she was already married and hence not entitled to inherit anything from her father.

I have considered the application and the submissions made. The issue of jurisdiction is paramount in any given proceedings and succession proceedings is no exception. I have looked at the form A 5 filed by the respondent vide Gichugu Senior Resident Magistrate’s Court succession NO. 40 of 2009 and

paragraph 6 of the said form which is in a form of an affidavit gives the value of the estate as kshs 500,000/-. It is evident that the subordinate court proceeded to entertain the cause and issued the grant despite the provision of **Section 48 of Laws of succession Act** that limits the jurisdiction of a magistrate's court to an estate whose monetary valued does not exceed kshs 100,000/-. The applicant's contention that the subordinate court at Gichugu Law Courts lacked jurisdiction is well founded I find that the court acted without jurisdiction and the grant issued is a nullity in law. One of course is bound to question the rationality of the law in limiting the jurisdiction of a magistrate in law of succession to kshs 100,000/-. Though the same at the time the Act came into force in Kenya had basis it may not be reflective of the present economic realities. The provision in my opinion should have been amended many years ago to enable magistrates courts in Kenya dispose of many succession causes within their geographical jurisdiction. Be that as it may, the law we have now limits jurisdiction as stated and the same as to be applied as is.

The respondent brought up an issue that this courts considers important to comment. This is because the court has taken judicial notice of the fact that there is a wrong assumption in this region and many other parts of this country that once a female member of a deceased family gets married she loses her right as a dependant under **Section 29,38 and 40 of Laws of Succession Act**. This assumption is brought about by the outdated customary and cultural practices that now belongs to history. The Law of Succession does not distinguish children on account of gender. The only provision that goes close to allowing customary practices in a succession cause is **Section 32** of the **Act** that provides for Districts where customary law may be used but even then the same is not cast in stone and the same must meet the demands of the constitution and the law. This view is informed by the decision of **MARTHA GUKIYA & ANOTHER -VS- KIBUGI HINGI AND ANOTHER (2010) e KLR** where the court of appeal observed as follows;

“Although Section 32 & 33 of the Succession Act appear to mandate the courts to apply customary law or custom on the distribution of a deceased's agricultural land under intestacy the application of such law is not absolute. It has to be subjected to strictures under Section 3(2) of Judicature Act”.

Section 3(2) of the Judicature Act provides as follows:

“ The High court , the court of Appeal and all subordinate court shall be guided by African Customary Law in civil cases in which one or more of the parties is subject to it or affected by it, so far as it is practicable and is not repugnant to justice and morality or inconsistent with any written law and shall decide all such cases according to substantial justice”.

The new constitution which is the supreme law of the land under **Article 159(3)** outlaws customary practices or cultural practices that are repugnant to justice or inconsistent with any written law. In addition to this, the provisions of **Article 102 (b)** and **Article 27** clearly abhors any kind of discrimination on account of gender. It is my view that any past cultural or customary law practices like the example being advanced by the respondent herein is repugnant to justice and inconsistent with the law and the constitution. It has no place in our modern and open society and must be rejected.

In view of reasons advanced above the summons for revocation and annulment of grant dated 28th March 2010 is allowed. The grant issued on 17th March 2010 and confirmed on 19th May 2010 and rectified on 23rd February, 2011 is hereby revoked and/or annulled. In view of the relationship between the applicant and the respondent there shall be no order as to costs.

R.K. LIMO

JUDGE

DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 1st DAY OF DECEMBER , 2014 in the presence of

Mr Njuguna holding brief for Maina counsel for applicant

The Respondent

Mbogo Court Clerk